



U.S. Department of Justice

Immigration and Naturalization Service

BH

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: VERMONT SERVICE CENTER Date:

JAN 8 2001

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[REDACTED]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was approved by the Director, Vermont Service Center. Upon subsequent review, the director revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a [REDACTED] corporation that claims to be engaged in the import and export of fresh bananas, and a subsidiary of [REDACTED] and [REDACTED], located in the People's Republic of China (PRC). It seeks to employ the beneficiary as its general manager and, therefore, endeavors to classify him as a multinational manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

Subsequent to the approval of the I-140 petition, the director reviewed an I-140 petition and an I-129L petition that the petitioner filed on behalf of another company employee. Based upon evidence that was submitted with those petitions, the director determined that the petitioner had not established that the beneficiary in the instant case was currently and would continue to be employed in a managerial capacity.

On appeal, counsel submits a brief.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The issue to be examined in this proceeding is whether the beneficiary is currently and will continue to be employed in a primarily managerial capacity.

The director revoked the petition on four grounds. First, the petitioner described the beneficiary's duties in abstract terms, with no indication as to the beneficiary's level of authority

within the company. Second, the hourly breakdown of the beneficiary's duties did not appear realistic given the size of the petitioner's staff. Third, the petitioner merely paraphrased the definition of managerial capacity when describing the beneficiary's duties. Finally, the duties of the company president and the beneficiary appeared duplicative.

On appeal, counsel addresses each of the director's reasons for denial. He claims that the beneficiary's job description clearly outlined the beneficiary's level of authority within the company; the director failed to specify why the hourly breakdown of the beneficiary's duties was unrealistic; the petitioner did not merely paraphrase the definition of managerial capacity; and the job duties of the general manager and president were not duplicative, as the president formulates policies and procedures, and the general manager (beneficiary) implements such policies and procedures.

Counsel's arguments are not persuasive. The record does contain sufficient evidence to support the petitioner's claim that the beneficiary functions in a primarily managerial capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

On appeal, counsel states that the beneficiary performs the following duties:

1. Arranges letters of credit and the supporting documents.
2. Reviews financial reports from outside accountants and marketing assistants to ensure that payments are made timely.
3. Hires and trains new personnel.
4. Negotiates contracts.
5. Manages inventory and purchasing.

First, the petitioner has not established that the beneficiary manages the organization or a department, subdivision, function or component of the organization, or an essential function. All of the job duties listed above are the day-to-day functions of the company's financial operations. Instead of managing these functions through other employees, the beneficiary personally arranges letters of credit, maintains inventory, and purchases needed supplies. None of these tasks, which comprise the majority of the beneficiary's time, are managerial.

Second, the petitioner has not established that the beneficiary supervises and controls the work of other supervisory, managerial or professional employees. Although counsel, on appeal, claims that the beneficiary supervises three employees (accountant, sales manager, and rental manager), the petitioner failed to present any evidence in support of this claim, such as an organizational chart. The petitioner also failed to show that the beneficiary manages an essential function because the evidence indicates that the beneficiary performs the essential function rather than managing a function through other employees.

Third, the petitioner failed to establish that the beneficiary functions at a senior level within the organizational hierarchy because an organizational chart depicting the company's hierarchy has not been submitted. Furthermore, as the petitioner failed to establish that the beneficiary manages a function, the beneficiary cannot function at a senior level with respect to the function managed.

Finally, the evidence is not persuasive in establishing that the beneficiary exercises discretion over the day-to-day operations. It appears that the beneficiary performs the actual day-to-day operations as opposed to managing them.

Based upon the evidence in the record, the decision of the director will not be overturned on appeal.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.